Seda Specialty Packaging Corporation *and* Wholesale Delivery Drivers, Salespersons, Industrial & Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO; Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO. Cases 21–CA–31554, 21–CA–31834, and 21–RC–19670

September 16, 1997

DECISION, ORDER, AND CERTIFICATION OF RESULTS

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On June 5, 1997, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Seda Specialty Packaging Corporation, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO; Wholesale Delivery Drivers, Salespersons, Industrial & Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO and that they are not the exclusive representative of these bargaining unit employees.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt, pro forma, the judge's recommendation that the Petitioners' election objections be overruled. Accordingly, we shall certify the results of the election.

Eric M. Carr, Esq. and *Peter Tovar, Esq.*, for the General Counsel.
Lawrence J. Song, Esq., for the Respondent/Employer.
Manuel Valenzuela, for the Charging Party/Petitioner.

DECISION

INTRODUCTION

ALBERT A. METZ, Administrative Law Judge. This case was heard at Los Angeles, California, on April 10, 1997.[1] Wholesale Delivery Drivers, Salespersons, Industrial & Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO and Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO (the Unions) have charged that Seda Specialty Packaging Corporation (the Respondent) has violated Section 8(a)(1) of the National Labor Relations Act (the Act).

By order dated January 8, 1997, the Regional Director ordered that an objection to the election be consolidated for hearing with the unfair labor practice case. This objection relates to the alleged interrogation, threat of loss of benefits, and unlawful maintenance of a list of employees by Labor Consultant George Sandoval and is also alleged as an unfair labor practice.

The Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

I. BACKGROUND

The Respondent operates a plastic product manufacturing facility in Los Angeles, California. In July 1996, the Unions were engaged in an organizing campaign at the facility seeking to obtain representation rights for the Respondent's employees. Eventually a representation election was held on September 6.[2] The results of the election showed that approximately 210 voters cast 65 votes for representation and 132 against representation. The Unions then filed the noted objection to the election.

II. WILLIAM SORENSON'S PROMISED PAY RAISE

Employee William Sorenson began work for the Respondent on March 11, 1996, with a temporary status. On about May 10 he was given permanent status and negotiated with the Respondent's vice president, Andy Iseli, for a raise. Iseli made a note of the raise on Sorenson's work application. When Sorenson did not receive the wage increase as agreed in July he complained to Supervisor Gurmile. On July 26 Gurmile told Sorenson, ''That he didn't think the company could do anything now, at this time, about raises because the union issue is pending.''

In October or November Sorenson brought his complaint about not receiving the raise to Iseli's attention. Iseli said he remembered discussing the pay raise, but he did not think there was anything he could do because the union issue was

[1] All subsequent dates refer to 1996 unless otherwise stated.

[2] The unit is:

All full-time and regular part-time production employees, maintenance employees, printing employees, shipping and receiving employees, sales service employees and production planning and scheduling employees employed by the Employer at its facility located at 2501 West Rosecrans Avenue, Los Angeles, California; excluding all other employees, inspectors, office clerical employees, professional employees, guards and supervisors as defined in the Act.

pending. Iseli said he would check with the the Respondent's lawyers and get back to Sorenson about the raise. Iseli did not mention the pay increase to Sorenson again.[3]

III. GENERAL DISCUSSIONS OF PAY RAISES AND SHIFT ROTATIONS

Machine operator Julio Soloman testified that when he was hired in May 1995 he was told by the Respondent's general manager, Ruben Fonseca, that the Respondent rotated the workers' shifts every 3 months. Soloman was rotated from the day shift to the graveyard shift in September 1995. Since that time he has not been changed back to the day shift. Soloman stated that in July 1996 there were meetings between management and the employees regarding shift rotations and wage increases. He recalled one such meeting with Department Supervisor Shah Madhusudan in his office. Employees asked Madhusudan about pay raises and being rotated from the night shift to the day shift. Madhusudan told the employees that the Respondent had been planning on these things but when the Unions came they stopped everything and they would not do anything until the union matter was resolved.

Soloman recalled another meeting between employees and Madhusudan in approximately November 1996. Employee Lopez said he wanted to know when the night-shift employees were going to be rotated. Madhusudan told the employees he thought it was not fair that the same people remained on the night shift and he agreed that there should be a rotation of shifts. He said he would give the employees an answer about rotating shifts in a couple of days. Madhusudan did not get back to the employees with an answer.

On January 12, 1997, the second shift of employees went to Madhusudan's office to ask about shift rotations and pay raises. In sum, employees Sorenson and Soloman testified that Madhusudan said that rotations had been approved but could not be implemented, because the union issue was still pending. Sorenson also asked about the employees receiving raises. Madhusudan said he could not do anything about the raises because the union issue was still pending. Sorenson asked if the raises were granted, would it be retroactive. Madhusudan responded they would not be retroactive, ''because you guys brought the union in.'' Sorenson asked if the supervisor meant him. Madhusudan said, ''All you guys.''

IV. ANALYSIS OF THE PAY AND SHIFT ROTATION ISSUES

The employees' testimony concerning pay raises and shift rotation was uncontroverted by the Respondent's witnesses. I draw the inference from the Respondent's unexplained failure to produce such witnesses that their testimony would have been adverse to the Respondent's case. *Laborers Local 652 (Southern California Contractors' Assn.)*, 319 NLRB 694, 697 (1995). Thus, the record shows that the Respondent's supervisors told employees that planned pay raises and promised shift rotations were not being implemented because of the Unions' organizational campaign. The Respondent blamed the Unions for its failure to provide the promised pay increases and shift rotation benefits. Additionally, Shah Madhusudan told employees that there would be no retroactive raises because the employees were responsible for bringing the Unions to the Company. I find that the Respondent's attributing its failure to grant pay raises and retroactive wage increases to union activities is a violation of Section 8(a)(1) of the Act. *Centre Engineering*, 253 NLRB 419, 421 (1980). Likewise, the retraction of the scheduled shift rotations due to union activity is a violation of Section 8(a)(1) of the Act. *Wellstream Corp*., 313 NLRB 698, 704 (1994).

V. LABOR CONSULTANT'S MEETING WITH EMPLOYEES

The Respondent hired a labor consulting service to assist it in challenging the Unions' organizational campaign. One of the consultants working for that firm was George Sandoval. As part of his services he held a series of employee meetings at the plant. One of these meetings held in late July with some night-shift employees is in contention in this case. Four witnesses testified about this meeting. Estimates varied as to the number of employees in attendance but I conclude, based on the credibility of the witnesses and the size of the room, that there were approximately 15 workers present.

Employee William Sorenson testified about the meeting and that there were approximately 30–35 employees in attendance. He recalled Sandoval started the meeting by taking roll from a piece of paper he had in his hand. As Sandoval called employees' names he asked if they had ever belonged to a union and, if so, how they felt about unions. When employees gave their responses, Sandoval would make notations on the piece of paper. Sandoval then asked the audience generally if anyone would like to share their experiences concerning unions. A few employees voiced their thoughts. Sandoval stated that he thought unions, particularly the Teamsters, were corrupt. He mentioned the Unions' organizers and that he considered one to be biased against African-American people. Sandoval stated that if the Unions got in there was no guarantee that employees would be getting the money they then earned. Sorenson remembered that Sandoval said the employees could get less after they paid union dues. Sorenson at one point conceded that Sandoval also said that there was some possibility employees could receive more pay. He later retracted this testimony. Sandoval asked employees to voice what they felt was wrong with the Company and needed improvement. He told the workers that whatever they said would be in strict confidence and that he was not there to find out who had signed authorization cards. Sandoval also told the employees that he did not care how they voted in the representation election but they should be sure to vote.

Employee Julio Soloman recalled events differently. He testified that Sandoval did not individually ask everyone in the room whether they had past experience with the Union. He recalled the employees were asked to raise their hand if they had been in a union before. Sandoval asked him, ''What do you think about the union?'' As each employee responded Sandoval would make notations on a paper in his hand. Soloman also testified that Sandoval told the employees that there would be no retaliation against them if they were in a union before and, ''We don't care you guys was in the union. We just want to know.'' Soloman stated that Sandoval told the group, ''Whoever signed the card, don't worry. The company isn't going to take any kind of retaliation to you guys.'' Soloman also remembered Sandoval said to ''other

[3] Certain 8(a)(3) unfair labor practices allegations were amended out of the complaint.

people who . . . wasn't [sic] belong to the union before but he say they will like it because some like the union, it's okay.'' Soloman recalled Sandoval saying he had been in touch with the management and nobody was promising if the Union came in the employees were going to get raises, ''but we probably can make less.'' Of all the witnesses Soloman alone remembered that Sandoval said the owner was the only one who could make big decisions and that if the Union got in he had the right to close or to move the Company. Soloman singularly testified that Sandoval said, ''Why you guys going to hire a union to represent you guys to ask for a raise when if you guys talk to the owner he can take care of you guys and nobody going to charge you a fee for talk with that owner.''

Employee Donald Trotter testified that Sandoval made a general inquiry if anyone had ever been in a union. Sandoval then invited those employees who raised their hands to share with the rest of the group what they thought of unions. Trotter recalled three or four employees responded to this invitation to speak. He was certain that when Sandoval asked the question about employees' experiences with unions he did not have any papers in his hands or write anything. Trotter testified Sandoval did not go around the room and ask employees individually what their experiences were with unions nor were there any other individual questions. Trotter recalled Sandoval saying about wages that there was no guarantee with a union that they would go up, go down, or stay the same.

George Sandoval denied that he individually asked employees if they had ever belonged to a union or if they supported the Union. He admitted asking the group if there was anyone that had prior union experience that they would like to share. He denied that he had marked on any paper what the various responses of employees were. Sandoval said he took roll and checked names from an employee list but made a point to put the list behind him afterwards. He denied having any papers in his hands after taking roll. Sandoval discussed the procedures concerning representation elections. He told the employees that assuming the Unions won the election, that did not mean that increases in wages or benefits were automatic. He told them their wages could go up, remain the same, or be reduced. Sandoval denied he promised the employees any benefits would be given to them if they voted against the Union. He also denied he told them that their benefits or pay would be reduced or that the company would close if the Union represented them. Sandoval related that he had been in another election campaign at the Los Angeles Airport where one of the union organizers had allegedly made a racial remark. He told the employees of the incident but did not say what the alleged remark was.

VI. ANALYSIS OF SANDOVAL'S MEETING

The Government alleges that during the meeting Sandoval unlawfully interrogated employees as to their union sympathies, maintained a list of their responses, and threatened to reduce their wages if they selected the Union to represent them. The Unions also alleged these actions as objectionable conduct affecting the results of the election.

Sorenson's credibility gauged by his demeanor and testimony were not convincing that he accurately recalled what happened in the meeting. He exaggerated the numbers in attendance. He was not persuasive that Sandoval individually interrogated employees as to whether they had belonged to a union and how they felt about unions. Sorenson vacillated as to what Sandoval said with regard to wages. He finally denied that Sandoval stated wages might go up with a union. I find Sorenson exaggerated what was said and do not credit his testimony concerning Sandoval's critical statements in this meeting.

Soloman left the impression of an uncertain witness. His demeanor was not impressive and I do not credit him on important details of the alleged violations. Soloman was the only witness who recalled that Sandoval said the owner had the right to close the business or move it to avoid the Union. Soloman alone recalled that Sandoval told the employees they did not need to pay a union to represent them because the Respondent could take care of them.[4] He did concede that the employees in general were asked to share their thoughts on unions if they chose. Soloman remembered Sandoval assured the employees that they had nothing to fear by speaking their minds and that some of them might like being in the Union. Trotter's demeanor was impressive and he testified in a clear manner without apparent self-interest. Sandoval was forthcoming in his detailed testimony of what was said and done at the meeting. He readily admitted asking the group as a whole if any of them had ever been in a union. He candidly testified to asking the group if anyone would care to share their thoughts about unions. I credit Sandoval's denial, which was supported by Trotter, that he individually interrogated employees about their union sympathies. I find that Sandoval's general question was not an unlawful interrogation but an invitation for comments from employees if they chose to respond as to their past experiences with unions. Responses were strictly voluntary. The interchange occurred in an open meeting and was not an interrogation about who presently supported the Union. Sandoval made several comments in the meeting assuring employees they need not fear any retaliation. I also credit Sandoval that he told the group that wages could go up, stay the same, or go down if a union represented them. Likewise I find, based on the record as a whole, that Sandoval did not keep a list of comments that employees made regarding unions. Under all the circumstances I find that Sandoval's questions and comments in the July meeting did not violate Section 8(a)(1) of the Act and were not objectionable conduct as alleged in the Unions' objections to the election.[5]

---

[4] Some of Soloman's recollections could arguably be considered unalleged objectionable conduct which nonetheless should be considered under the Board's representation case investigative function. *White Plains Lincoln Mercury*, 288 NLRB 1133, 1136–1139 (1988). (''Simply stated, a 'meritorious objection' is anything that would justify setting aside the election, whether that misconduct was raised by the union in its objections or was discovered subsequently by the Agency's own procedures in resolving the questions raised as to the propriety of the election.'') Supra at 1138. Soloman's testimony about closing the plant and the Respondent's taking care of the employees was not alleged as objectionable conduct. Regardless, I credit Sandoval's denials concerning making such statements. As noted I did not find Soloman's demeanor and testimony convincing.

[5] Sandoval's statement that a union agent was prejudiced against African-Americans was not alleged as objectionable conduct. The remarks were confined to the approximately 15 employees in this meeting. There were 210 employees eligible to vote in the election. The remarks were not part of a campaign ''which seeks to overstress and exacerbate racial feelings by irrelevant, inflammatory appeals to

CONCLUSIONS OF LAW

1. Seda Specialty Packaging Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Wholesale Delivery Drivers, Salespersons, Industrial & Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO and Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Blaming the Unions for the Respondent's failure to grant promised pay increases and shift rotation benefits.

(b) Telling employees that there would be no retroactive pay raises because the employees were responsible for bringing the Unions to the Respondent.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated the Act except as specified.

6. The Respondent did not engage in objectionable election conduct that affected the results of the representation election held in Case 21–RC–19670 on September 6, 1996.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) of the Act, I find it necessary to order it to cease and desist from this conduct and take certain affirmative action. Additionally, as the record demonstrates that there are a number of Spanish-speaking employees in the unit, I shall order that the notices be posted in both English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondent, Seda Specialty Packaging Corporation, Los Angeles, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Blaming the Unions for the Respondent's failure to grant promised pay increases and shift rotation benefits.

(b) Telling employees that there would be no retroactive pay raises because the employees were responsible for bringing the Unions to the Respondent.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facilities in Los Angeles, California, copies of the attached notice marked ''Appendix.''[7] Copies of the notice written in both English and Spanish, on forms provided by the Regional Director for Region 21, after being signed by the the Respondent's authorized representative, shall be posted by the the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the the Respondent has gone out of business or closed the facility involved in these proceedings, the the Respondent shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current employees and former employees employed by the the Respondent at any time since September 10, 1996.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

IT IS FURTHER ORDERED that the objections to the election conducted in Case 21–RC–19670 on September 6, 1996, be overruled.

racial prejudice.'' *Englewood Hospital*, 318 NLRB 806–807 (1995). I find that Sandoval's racial comments in this single meeting were insufficient to warrant setting aside the election. *Catherine's, Inc*., 316 NLRB 186 (1995). Compare *Zartic, Inc*., 315 NLRB 495 (1994); and *KI (USA) Corp*., 309 NLRB 1063 (1992).

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT blame Wholesale Delivery Drivers, Salespersons, Industrial & Allied Workers, Local 848, International Brotherhood of Teamsters, AFL–CIO and Miscellaneous Warehousemen, Drivers & Helpers, Local 986, International Brotherhood of Teamsters, AFL–CIO for the

Respondent's failure to grant promised pay increases and shift rotation benefits.

WE WILL NOT tell our employees that there will be no retroactive pay raises because the employees were responsible for bringing the Unions to the Respondent.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

SEDA SPECIALTY PACKAGING CORPORATION